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IN THE SUPREME COURT
of the United States

October Term, 1976

No. 76-465

CITY OF ALEXANDRIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF OLD TOWN YACHT BASIN, INC. IN OPPOSITION

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OPINION BELOW

The Opinion of the Court of Appeals is not yet reported. It appears as Appendix A to the petition for certiorari. The Opinion of the District Court is reported at 386 F. Supp. 1287.

JURISDICTION

The judgment of the court below was entered on July 6, 1976. The petition for certiorari was filed on October 4, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether the District Court has jurisdiction to maintain the status quo by enjoining the City of Alexandria from removing Old Town Yacht Basin, Inc. from premises whose ownership is the subject of this litigation.

STATEMENT OF THE CASE

This is a quiet title action filed by the United States on December 21, 1973 in the United States District Court for the District of Columbia, in order to establish the claim of the United States to ownership of certain lands lying easterly of the 1791 high water line of the Potomac River along the Alexandria, Virginia waterfront. Among

the parties against whom the action was brought were the City of Alexandria and Old Town Yacht Basin, Inc. (hereafter "Old Town"), both of which claim property rights within the area which is the subject of the litigation. On December 9, 1974, the District Court dismissed the action on the ground that it "lacks jurisdiction to hear and determine a quiet title action to any land situated within the territorial limits of Virginia." (386 F. Supp. at 1289).

While the appeal of the United States of this decision was pending, Old Town, for reasons described below, sought and obtained from the Court of Appeals an order enjoining any attempt by the City to remove Old Town from premises which it occupies and which are part of the area in dispute.

On July 6, 1976, the Court of Appeals reversed the District Court's decision and held that

under applicable legislation the Federal courts for the District of Columbia have exclusive jurisdiction to consider this action. In remanding, the Court of Appeals also vacated the order enjoining the City of Alexandria from taking action against Old Town, stating that the District Court would thereafter have jurisdiction to deal with that matter.

On October 4, 1976, a number of the defendants, including the City of Alexandria but not including Old Town, joined in a petition for certiorari seeking review of the decision of the Court of Appeals concerning the question of jurisdiction to hear the quiet title action. In addition, on that same date the City of Alexandria filed a separate petition for certiorari seeking review of the Court of Appeals' ruling that the District Court would have jurisdiction to enjoin the City from attempting to remove Old Town during the

pendency of this litigation. This response is directed to that separate petition.

This injunction issue arises from the fact that among the properties whose ownership is involved in this quiet title action are two parcels of land upon which Old Town has operated a marina since 1957. One parcel was purchased in fee by Old Town in 1957. The other parcel consists of land claimed by the City of Alexandria, which Old Town first occupied in 1956 under an assignment of a ten year lease which the City of Alexandria had issued at a rental of $1 per year.

Following the expiration of that lease Old Town remained in possession and continued to pay $1 per year until 1968 when the City of Alexandria demanded an increase to $300 per month. The increased amount was then paid until November 1971, after which further payments were withheld by Old Town based upon its conclusion

that the City did not have title to the property. This conclusion was confirmed in January 1973 when the United States advised Old Town that the United States was the fee owner of all lands occupied by Old Town. Shortly thereafter, the United States granted Old Town revocable authority to continue its occupancy of such lands for the purpose of operating a marina and related facilities.

Despite the claim of the United States to ownership of the premises in question, and the filing of its quiet title action in December 1973, the City of Alexandria initiated suit in February 1974 against Old Town in state court to collect its claim to back rent. Following the disposition of that litigation, and the City's rejection of Old Town's offer to make future payments of $300 per month into escrow, pending resolution of the questions of title in the instant case, the City in

February 1976, served notice that Old Town must vacate the disputed premises.

Upon receiving such notice Old Town moved the Court of Appeals for an order enjoining the City from taking action to compel such removal, pending the resolution of the title dispute. The motion was accompanied by an affidavit reciting the facts set forth herein (see Motion of Old Town Yacht Basin, Inc. for Injunction Against the City of Alexandria and attachments thereto, filed March 18, 1976).

The Court of Appeals thereafter issued such an order, which was conditioned upon Old Town's payment of $300 per month, such amounts to be kept by the City in an escrow account. Such condition has been complied with. As noted above, when the Court of Appeals issued its opinion reversing the District Court's decision on the question of jurisdiction over the quiet title action,

and remanded for trial, it vacated the injunction, stating that thereafter "the matter will be in the hands of the District Court." The matter has not yet been brought before the District Court.

ARGUMENT

The ruling by the Court of Appeals that the District Court has jurisdiction to maintain the status quo by enjoining the removal of Old Town pending the outcome of this litigation accords with settled legal principles and does not require review by this Court. Moreover, review by this Court would in any event be premature since no such action has yet been taken by the District Court.

1. In requesting review the City of Alexandria relies principally upon 28 U.S.C. §2283 which, it contends, prohibits a federal court from enjoining a state court proceeding. That provision states as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a state court, except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction or to protect or effectuate its judgments."

It is established that "[t]his statute and its predecessors do not preclude injunctions against the institution of state court proceedings, but only bars stays of suits already instituted." Dombroski v. Pfister, 380 U.S. 479, 484, n.2 (1965), and authorities cited. Since the City has never instituted proceedings in state court to compel Old Town's removal from the premises in question, the foregoing statute accordingly has no application. While the City also claims that its notice to Old Town purporting to terminate the latter's tenancy became a state court proceeding within the meaning of 28 U.S.C. §2283, an almost identical claim was rejected in American Houses v. Schneider, 211 F.2d 881, 885 (3d Cir. 1954).

2. Even if the City had already begun an action in state court, the instant case would fall within one of the express exceptions to 28 U.S.C. §2283. Indeed, even before that statute was amended in 1948 to expressly include the stated exceptions, this Court had held that it "does not preclude the use of the injunction by a federal court to restrain state proceedings seeking to interfere with property in the custody of the court." Toucey v. New York Life Ins. Co., 314 U.S. 118, 135 (1941). The Court cited prior authorities holding "that the court, whether federal or state, which first takes possession of a res withdraws the property from the reach of the other," and concluded that the rule applicable to in rem proceedings is "that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction . . ." (314 U.S. at 135).

Among the matters to be decided in the present litigation is whether the United States or the City of Alexandria has title to the property which is occupied by Old Town. The United States has authorized Old Town to continue its occupancy; the City, on the other hand, threatens to attempt to remove Old Town from such property. At issue, therefore, is the right to possession of a "res" which by virtue of the action filed by the United States, is already within the jurisdiction of the Federal Court, thereby "withdrawing the property from the reach of the [State Court]" (Toucey, supra, 314 U.S. at 135).

The City contends that Toucy has no application here since in any state court action between the City and Old Town the latter would be precluded from raising the issue who has title to the premises in question. Nevertheless, there is every prospect that state court litigation to remove Old

Town would involve the same issues of title as are now before the Federal court. While it is the general rule that a tenant is estopped to deny the title of his landlord, there are exceptions to that rule which are pertinent here. For example, it is established law in Virginia, as well as other jurisdictions, that "a tenant may dissever the relationship existing between himself and his landlord without first surrendering possess.on of the leased premises," provided there is "a clear, positive, and continued disclaimer and disavowal of the landlord's title," knowledge of which is brought home to the landlord. Matthews v. W. T. Freeman Co., 191 Va. 385, 396 60 S.E. 2d 909, 914 (1950). In such a case, the tenant may claim the fee in himself or in a third person. Voss v. King, 33 W. Va. 326, 10 S.E. 402, 405 (1889). It has also been held that the otherwise applicable rule precluding a tenant from disputing the land-

lord's title does not apply when title to the property, as in the instant case, is claimed to be in the United States. See City Council of Greenville v. White, 194 Miss. 145, 11 So. 2d 816, 818-19 (1946); Ellis v. Sutton, 126 Miss. 102, 88 So. 519, 521 (1921); Welder v. McComb, 10 Tex. Civ. App. 85, 30 S.W. 822, 825 (1895).

Thus, where, as here, Old Town has repeatedly made known to the City that it is in possession under the authority of the United States as the rightful owner of the premises, there is clear authority that it may assert this claim in state court litigation seeking Old Town's removal. Since that same issue is already before the Federal court it would be entirely appropriate for the latter to enjoin the City from initiating such state court litigation.

CONCLUSION

For the foregoing reasons, the petition of the City of Alexandria for a writ of certiorari should be denied.

Respectfully submitted,

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